

BOARD OF PERSONNEL APPOINTMENT

IN THE MATTER OF DUE BOND

BUTTE TEACHERS' UNION, LOCAL NO.
132,

Complainant:

— 1 —

JOB SICOTTE, PH.D., Superintendent,
BUTTE SCHOOL DISTRICT NO. 1, BUTTE,
MONTANA.

FINDING PAGE 8

Respondent—

No exceptions having been filed in the above-entitled matter, IT IS HEREBY ORDERED, that the Findings of Fact, Conclusions of Law and Recommended Order dated January 6, 1970, are hereby adopted as the Final Order of the Board of Personnel Appeals.

Dated this 23rd day of March, 1970.

BOARD OF PERSONNEL APPEALS

By Brent Cromley
Brent Cromley
Chairman

BEFORE THE BOARD OF PERSONNEL APPEALS

THE MATTER OF U.S. F-30-77

BUFFALO TEACHERS' UNION, LOCAL NO.
332,

Complainant.

100

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND RECOMMENDED ORDER

JOE STODDIE, PH.D., Superintendent,
BUTTE SCHOOL DISTRICT NO. 1, BUTTE,
MONTANA.

Respondent.

On September 30, 1977, the Complainant filed a complaint alleging that the Respondent had violated Section 59-1605 R.C.M. 1947 by making comments regarding the filing of grievances by union members. The Complainant also alleged that Respondent had violated the master agreement by making public comments about the grievances.

In Respondent's answer, filed October 18, 1977, he denied violating either the statute or the grievance procedure in the collective bargaining agreement.

A hearing was held on November 29, 1977, in accordance with ANN 24-3.8(26)-38300(3)(a) and Section 82-4209 R.C.M. 1947 and under authority of Section 59-1607 R.C.M. 1947.

RULINGS ON ADMISSIBILITY OF EVIDENCE

The Complainant objected to the contents of Respondent's Exhibit No. F in that it was extraneous to the issue at hand. The evidence was irrelevant and has, therefore, been disregarded in arriving at this decision.

Based upon the substantial evidence in the record I make the following:

ПРИЧЕСКИ ДЛЯ ЖЕНЩИН

1. The Butte Teachers Union, Local No. 332 represents teachers, among other personnel, employed by Butte School District.

1 No. 1.

2 2. The Respondent, Joe Bleotte, is the Superintendent of
3 Butte School District No. 1.

4 3. Negotiations between the Union and the School District
5 broke down and resulted in a strike in May, 1977.

6 4. School mill levy requests were defeated at the polls by
7 the voters twice in each of the last two years.

8 5. By letters dated August 19, 1977, the Business Agent of
9 the Butte Teachers Union filed six individual grievances and
10 certain letters of concern, on behalf of the members, with the
11 Respondent.

12 6. On September 22, 1977, a newspaper reporter requested
13 information from the Respondent concerning the grievances which
14 had been filed.

15 7. No information was supplied to the reporter until after
16 the Board of Trustees met to discuss the individual grievances
17 and letters of concern.

18 8. On September 27, 1977, the Respondent made the following
19 remarks to the reporter:

20 "Apparently the union has indicated through these
21 grievances that it wants to strictly adhere to the
22 contract. Well, we can do that, too. They have
23 decided to create the atmosphere under which they
24 would like to work."

25 "Each grievance that goes to arbitration costs the
26 school district between \$200 and \$300 directly and
27 another \$1,500 in indirect costs. The indirect costs
28 represent about 60 hours of work for the Superintendent
29 and another 60 hours for School Clerk, Bill Milligan,
30 at salaries of about \$14 to \$12 an hour, respectively."

31 "I suppose matters for arbitration could be handled as
32 a group, but in all past cases each has been handled
33 individually."

34 "The large number of grievances and potential grievances
35 could put further strains on an already tense relationship
36 between the board and the union."

37 "Strict application of the contract in all cases will
38 make for a less cooperative relationship among teachers
39 and administrators."

40 "Further tension between the board and the teachers'
41 union could lead to more public resentment about schools

1 and hurt bond issues and still levy requests."

2 The above remarks were printed in the Montana Standard
3 newspaper dated September 29, 1977.

4 DISCUSSION

5 Section 59-1605(1)(a) R.G.M. 1947 prohibits public employees
6 from interfering with, restraining or coercing employees in the
7 exercise of rights guaranteed in Section 59-1603. Section 59-
8 1603(1) protects public employees who exercise their right of
9 self-organization, to form, join or assist any labor organi-
10 zation, to bargain collectively through representatives of their
11 own choosing on questions of wages, hours, fringe benefits, and
12 other conditions of employment and to engage in other concerted
13 activities for the purpose of collective bargaining or other
14 mutual aid or protection, free from interference, restraint or
15 coercion. In essence the Act lists rights of public employees;
16 prohibits acts of the employer which interfere, restrain or
17 coerce them in exercising those rights; and empowers the Board of
18 Personnel Appeals to direct remedial action where violations are
19 found. These are commonly called unfair labor practices.

20 In the instant case the Teachers Union contends that comments
21 made by the Superintendent of Schools, which were subsequently
22 printed in the local newspaper, interfere with, restrain and
23 coerce its members in the exercise of their rights. The Union
24 also alleged in its charge that the Superintendent's actions in
25 disclosing the contents of the grievance letters and letters of
26 concern to the public violated the basic principles of the master
27 agreement. This decision will not determine whether a contract
28 clause was violated. Such matters should be processed under a
29 grievance procedure. They are not matters which should be submitted
30 for determination by an agent of the Board. Here we are concerned
31 solely with whether the Superintendent committed an unfair labor
32 practice by making certain statements which were later printed in

1 the newspaper. Further, I will not address the question of
2 personal privacy versus the public's right to know. That, too,
3 is not properly a determination which an agent of the Board
4 should make.

5 For guidance in determining the kind of conduct by an
6 employer which amounts to an unfair labor practice we may refer
7 to the National Labor Relations Act and to decisions of the
8 National Labor Relations Board and the federal courts. Section
9 8(e) of the NLRA, a counterpart of which we do not have in our
10 statute, provides that: "The expressing of any views, arguments,
11 or opinions, or the dissemination thereof, whether in written,
12 printed, graphic, or visual form, shall not constitute or be
13 evidence of an unfair labor practice under any of the provisions
14 of this Act if such expression contains no threat or reprisal or
15 force or promise of benefit."

16 In Dali-Tex Optical Co., NLRB 1962, 50 LRRM 1089, the NLRB
17 held that the above provision is limited to unfair labor practice
18 cases and has no application in representation cases. The Board
19 went on to affirm that "the test of conduct which may interfere
20 with the 'laboratory conditions' for an election is considerably
21 more restrictive than the test of conduct which amounts to inter-
22 ference, restraint, or coercion which violates Section (8)(a)(1)."
23 In other words, an employer's conduct during a union's organizational
24 efforts and up to the actual election is judged more severely
25 than that same conduct would be judged after the labor organization
26 has won the election and is well established as the employees'
27 representative for collective bargaining. The U.S. Supreme Court
28 in NLRB v. Gissel Packing Co., 71 LRRM 2481, noted that the free
29 speech right usually arises in the context of a new organizational
30 drive. There the Court said that employers face certain hazards
31 when they seek to estimate or resist unionization efforts, but as
32 long as the conduct involved actions which were easily avoidable

1 such as discharge, surveillance and coercive interrogation, they
2 could not complain about the fine distinctions made between
3 unfair labor practices; however, the court went on to say "Where
4 an employer's antilabor efforts consist of speech alone...the
5 difficulties raised are not easily resolved."

6 In the present case we do not have an organizational effort
7 by a union followed by employer statements concerning the effect
8 of unionization upon the company; but rather, statements made by
9 the employer's representative, concerning the possible effect certain
10 conduct on the part of a union might have on the union's relation-
11 ship with the School Board, the members' relationship with the
12 administrators and the school's relationship to the public. The
13 union is well established and has been recognized by the School
14 District as the employees' representative for the purpose of
15 collective bargaining for some time.

16 Again by referring to the Diznal case we are able to discern
17 what the U.S. Supreme Court considers to be the appropriate assess-
18 ment of the employer's right to express himself freely during the
19 organizational effort as against employees' rights to exercise
20 their rights free of interference, restraint, or coercion:

21 "An employer is free to communicate to his employees any
22 of his general views about a particular union, so long as
23 the communications do not contain a 'threat of reprisal or
24 force or promise of benefit.' An employer may even make a
25 prediction as to the precise effects he believes union-
26 isation will have on his company, however, the prediction
must be carefully phrased on the basis of objective fact
to convey an employer's belief as to demonstrably probable
consequences beyond his control or to convey a management
decision already arrived at to close the plant in case of
unionization."

27 Clearly, the Court was addressing a different fact situation,
28 i.e., unionization was being attempted.

29 The NLRB's rules on free speech in election cases are more
30 stringent than they are in unfair labor practice cases. See
31 General Shoe Corp., 21 LRRM 1337.

32 In Texas Industries Inc. v. NLRB, 57 LRRM 2046, it was held

1 that "Section 8(a) of the Labor Management Relations Act permits
2 the employer to state his legal rights under the Act and to
3 predict that dire economic consequences will follow from a union
4 victory in a representation election; it is only when the
5 employer threatens to take economic or other reprisals against
6 employees that a violation may be found." See also Transport
7 Clearings, Inc., 52 LRRM 2034.

8 The following seems clear, based on the findings of fact and
9 inferences which may reasonably be made therefrom: (1) there was
10 no union organizational effort or pending election affecting
11 either the Complainant or Respondent or their organizations, (2)
12 there was no threat by the Superintendent to take reprisals
13 against the employees; he used the words "could put further
14 strains . . . , could lead to more public resentment . . ." (3) the
15 Superintendent's statement "strict application of the contract
16 . . . will make a far less cooperative relationship among teachers
17 and administrators" cannot be construed as a threat to the
18 employees' right to file grievances or to any other of their
19 rights.

20 The facts in this case do not support a finding of an unfair
21 labor practice charge against the Respondent. I do not find that
22 the conduct of the Superintendent interfered with, restrained,
23 or coerced any of the employees represented by the Complainant.
24 There were no statements made by him which contained a threat of
25 reprisal or force or a promise of benefit. This is not to say
26 that those same statements made in a different social and political
27 environment and made prior to an election or during an organizational
28 effort could not ever constitute an unfair labor practice.

29 CONCLUSIONS OF LAW

30 The Respondent did not commit an unfair labor practice and
31 will not, therefore, in violation of Section 50-1605, R.C.M. 1987,
32

1 RECOMMENDED ORDER
2

3 That the unfair labor practice charge filed by the Butte
4 Teachers Union against Joe Slettle, Superintendent, Butte School
5 District No. 1 be dismissed.

6 That any exceptions to these Findings of Fact, Conclusions
7 of Law, and Recommended Order be filed within twenty (20) days of
8 service with the Board of Personnel Appeals, Aspen Court Building,
9 35 South Last Chance Gulch, Box 292 Capitol Station, Helena,
10 Montana, and that if no exceptions are so filed within that time,
11 this Recommended Order become the Final Order.

12 Dated this 6th day of January, 1978.

13 BOARD OF PERSONNEL APPEALS
14 BY 
15 Jack H. Catroux
Hearings Examiner

16 CERTIFICATE OF MAILING

17 I, Ray Harrison, hereby certify that on the 9th day of
18 January, 1978, I mailed a true and correct copy of the above
19 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER to
the following:

20 James McGarvey
Montana Federation of Teachers
P.O. Box 1246
Helena, MT 59601

21 J. Brian Tierney
Butte Teachers Union No. 332
125 West Granite St.
Butte, MT 59701

22 Joe Slettle, Ph.D.
23 Superintendent
24 Butte School District No. 1
25 111 North Montana St.
26 Butte, MT 59701

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29 
Ray Harrison
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